

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3373 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

BHIKABHAI CHUNILAL BHATIA

Versus

STATE OF GUJARAT

Appearance:

MR MK VAKHARIA for Petitioner

MS HARSHA DEVANI, AGP for respondents Nos. 1 and
3.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/11/98

ORAL JUDGEMENT

Mr. Vakharia, learned Advocate for the petitioner seeks leave to delete respondent No.2. Permission granted. Respondent No.2 is ordered to be deleted.

Rule. Ms Harsha Devani, learned AGP waives service of the Rule on behalf of respondents Nos.1 and 3. At the request of the learned Advocates for the

respective parties, this petition is taken up for final hearing to-day.

The petitioner by way of this petition is challenging the order dated 23-4-1998, Annexure "A" to the petition, passed by Deputy Secretary, Panchayat, Rural Housing and Rural Development Department, allowing the revision application filed by one Chauhan Ramanlal Somabhai and setting aside the order dated 18-3-96 passed by the District Development Officer, Sabarkantha at Himatnagar and discontinuing the petitioner to work as Sarpanch of Bhiloda Panchayat for non-payment of Government dues on 1-7-1991 . It appears that the petitioner has been removed as a Sarpanch on the ground of non-payment of Government dues . It appears that on 10th May 1995 the petitioner again filed nomination form for the post of Sarpanch and got himself elected on 21st June, 1995. As the period of four years from 1-7-91 had not elapsed and as the dues were still outstanding, an application under section 32 of the Gujarat Panchayats Act was made by one Chauhan Ramanlal Somabhai and the Taluka Development Officer, Bhiloda on 9-2-96 held that the petitioner is disqualified to become Member of the Panchayat and was ordered to be removed from the office Sarpanch of the Panchayat.

Against the said order, an appeal was preferred by the petitioner and the same was allowed by the District Development Officer by his order dated 18-3-96. The said Shri Chauhan preferred revision application which was rejected by the Secretary, Panchayat and Rural Housing Development on the ground that he had no jurisdiction to decide the revision application as the finality is attached to the order of the District Development Officer. The said Shri Chauhan Ramanlal filed a petition before this Court being Special Civil Application No. 4585/96 challenging the said order and this Court allowed the said petition on 29-7-97 and remanded the matter to the first respondent to decide the revision application in accordance with law after hearing the concerned parties.

It appears that said Shri Chauhan Ramanlal Somabhai sought permission to withdraw the revision application preferred by him by stating that he was misled in initiating the proceedings against the present petitioner. Respondent No.3, who had fixed the hearing of the revision application, inspite of the request to withdraw the revision application, decided the revision application against the petitioner. It is this order which the petitioner has challenged by way of this

petition.

Having gone through the reasoning in the order passed by respondent No.3, it appears that the petitioner has not been heard on the date of the hearing that is 22nd April 1998. On the said date an adjournment was sought on behalf of the petitioner for the purpose of filing a written reply. A grievance has been made on behalf of the petitioner that if the petitioner was granted some time, he could have produced necessary documents with a view to show that he was not a defaulter and, therefore, the allegations made against him by the original complainant Shri Chauhan are without any basis. In any case, it was pointed out that once the original complainant Shri Chauhan had sought permission to withdraw the revision application by stating that he was misled to make allegations against the petitioner, the concerned respondent ought to have dropped the proceedings against him. Having considered the submissions advanced on behalf of the parties, I am of the opinion that the matter is required to be remanded for a limited purpose of allowing the petitioner to file reply alongwith necessary documents to show whether the petitioner was in fact a defaulter for the period in question or not.

In the result, this petition is partly allowed. The matter is remanded to the respondent No.3-authority for a limited purpose of allowing the petitioner to file reply alongwith necessary documents to show whether the petitioner was in fact a defaulter for the period in question or not. The respondent authority shall allow the petitioner to file reply together with the documents and thereafter decide the question whether the petitioner is a defaulter or not and shall pass an appropriate order in accordance with law after hearing the concerned parties within four weeks from the date of receipt of this order. Till then, the interim relief granted by this Court shall continue and in case the decision is adverse to the petitioner, the said interim relief shall further continue for a period of one week from the date of communication of the decision to the petitioner to enable the petitioner to take appropriate recourse. Rule is made absolute to the aforesaid extent with no order as to costs. Interim relief stands vacated subject to the direction aforesaid.

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